

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

RICKY JOE USREY,

Plaintiff,

vs.

DENISE DEYOTT and MIKE
FERRITER,

Defendants.

Cause No. CV 12-00092-H-DLC-RKS

ORDER

Plaintiff Ricky Usrey has filed two Motions to Compel Discovery. CD 22, 27. Mr. Usrey served discovery requests upon Defendant Deyott on March 22, 2013. At the request of Defendants' counsel, Mr. Usrey stipulated to a two-week extension of the 30-day time period provided for a response. See Fed. R. Civ. P. 34(b)(2)(A). Mr. Usrey did not receive Defendants' discovery responses in that extended time period, and filed a motion to compel discovery on May 22, 2013. CD 22. The motion sought an order requiring Defendants to produce for inspection and copying the documents previously requested. CD. 22. The Court issued an order requiring Defendants to respond to the first motion to compel on or before June 5, 2013. CD 24.

On June 6, 2013 (a day after the Court's deadline), counsel for Defendants filed a response to Mr. Usrey's motion indicating that "due to the press of normal business resulting from his other duties as staff attorney for the Department of Corrections, the attorney for Defendants was unable to provide responses to Defendants' discovery requests until June 3, 2013." CD 26, p. 2.

Counsel for Defendants has a history of dilatory actions in this case. First, he failed to timely file the Waiver of Service requested by the Court (the waiver was due on April 25, 2013 (CD 18) but was not filed until May 8, 2013 (CD 21)). Secondly, counsel failed to timely file an Answer for Defendant Ferriter (the answer was due on May 23, 2013 (CD 18) and not filed until May 24, 2013 (CD 25)). Third, counsel failed to timely respond to Mr. Usrey's discovery requests (responses were due on or before May 3, 2013 but were not served until June 3, 2013). Lastly, counsel disregarded the Court's June 5, 2013 deadline for responding to Mr. Usrey's motion to compel (CD 24) and did not respond until June 6, 2013. CD 26.

Mr. Usrey has now filed a "Motion and Notice to the Court and Request for Court Enforcement of Petitioner's Plaintiff's Recent Motion to Compel Discovery and Request for Default Judgment against Defendants." CD 27. Therein, Mr. Usrey points out that Defendants have waived their right to object to his discovery

requests and seeks an Order requiring Defendants to fully comply with his discovery requests. He further requests default judgment against Defendants.

Rule 33 of the Federal Rules of Civil Procedure provides that “any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.” Fed.R.Civ.P. 33(b)(4) (emphasis added); see also Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th Cir. 1992)(“It is well established that a failure to object to discovery requests within the time frame required constitutes a waiver of any objection.”). By failing to timely respond to Mr. Usrey’s discovery requests, Defendants waived their right to object to those requests.

Defendants must amend their responses in order to withdraw all objections and provide full and complete responses to Mr. Usrey’s discovery requests.

Mr. Usrey’s request for default judgment is denied. Default judgment is an extreme sanction and is appropriate only when a defendant fails to comply with a court order or fails to provide any answers to interrogatories. Fed.R.Civ.P. 33(b), 33(d). Defendants’ conduct has not risen to that level. However, should counsel continue to ignore obligations to Mr. Usrey and the Court, more severe sanctions – including default judgment – may be imposed.

Any further discovery motions must include a certification that the parties

have conferred regarding the issue in compliance with Rule 37 of the Federal Rules of Civil Procedure, Local Rule 7.1(c)(1), and Local Rule 26.3(c).¹

It is **ORDERED**:

1. Mr. Usrey's Motions to Compel (CD 22, 27) are granted.
2. On or before June 21, 2013, Defendants shall amend their discovery responses, withdraw all objections, and provide full and complete responses to Mr. Usrey's discovery requests.
3. Mr. Usrey's request for default judgment (CD 27) is denied.
4. At all times during the pendency of this action, Mr. Usrey SHALL IMMEDIATELY ADVISE the Court and opposing counsel of any change of address and its effective date. Failure to file a NOTICE OF CHANGE OF ADDRESS may result in the dismissal of the action for failure to prosecute pursuant to Fed.R.Civ.P. 41(b).

DATED this 11th day of June, 2013.

/s/ Keith Strong
Keith Strong
United States Magistrate Judge

¹Mr. Usrey was provided a copy of these rules with the Court's February 12, 2013 Scheduling Order. CD 13.